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BACKGROUNDER

AUSTRALIA REJECTS PORTUGUESE CRITICISM OF TIMOR GAP TREATY

The Timor Gap Zone of Cooperation Treaty between Australia and Indonesia, which establishes a provisional regime for joint development of petroleum resources in an area of overlapping maritime jurisdiction in the Timor Sea, represents a creative solution to a diplomatic impasse on resolution of a boundary dispute between neighbouring countries.

It is an imaginative approach to breaking the deadlock on delimitation negotiations first begun between Australia and Indonesia in 1979 after it became clear that the two countries held very different views of the applicable rules of international law.

However, while removing a potential source of bilateral and regional friction, Australia's signing of the Treaty has been criticised by the Portuguese Government as "violating the legitimate right of the people of Timor to self-determination and their sovereign right to their resources," as well as disregarding Portugal's status in the matter.

According to Portugal, the Treaty constitutes "a clear and flagrant violation of international law and the United Nations Charter, especially since numerous resolutions adopted by the General Assembly and the Security Council do not recognise Indonesia's sovereign power over East Timor, which was militarily and illegally occupied in December 1975".

Australia rejects absolutely the Portuguese claims that its actions are inconsistent with established international law. Indeed, Senator Gareth Evans has stated publicly that should Portugal seek to initiate any action in any forum, Australia would defend its position with vigour and determination.

There is no binding legal obligation not to recognise the acquisition of territory acquired by force. Moreover, even if the acquisition is recognised, it does not signify approval of the circumstances of acquisition.

The statement in Parliament by the Prime Minister in August 1985, which set out the Australian Goverment's position on the issue, made it clear that although Australia's de jure recognition of Indonesian sovereignty over East Timor had taken effect in 1979, Australia did not condone the manner in which the province was incorporated.

Furthermore, conclusion of the Timor Gap Zone of Cooperation Treaty does not, as a matter of international law, signify Australia's approval of Indonesia's original acquisition of the territory of East Timor.

In international law the legality of the original acquisition of territory has to be distinguished in subsequent dealings between the state acquiring that new territory and other states.

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The East Timor issue is a matter quite separate from the Timor Gap Zone of Cooperation Treaty, which concerns maritime jurisdiction and petroleum resources of neighbours and is of no concern to Portugal on the other side of the world.

Australia has consistently supported discussions between Portugal and Indonesia under the auspices of the UN Secretary-General to resolve the lingering East Timor issue between those two countries.

It should be noted that the Treaty is provisional in nature and does not delimit a final seabed boundary. Australia continues to assert its sovereign rights over the seabed extending to the northern boundary of the Zone of Cooperation created by the Treaty (that is, to the geomorphological edge of the natural prolongation of Australia's continental shelf marked by the Timor Trough).

The Treaty itself contains provisions to the effect that it will not prejudice the position of either Australia or Indonesia in respect of permanent delimitation of the continental shelf in the Zone of Cooperation. Therefore, Australia does not concede that any sovereign rights over seabed resources that appertain to the land mass of East Timor in fact extend into the Zone of Cooperation.

The assertion that the people of East Timor have permanent sovereign rights over the seabed resources in the Zone of Cooperation is not accepted by Australia. Consistent with this position is the fact that Australia had never conceded, prior to 1975, any Portuguese interest in the area of seabed forming part of the Zone of Cooperation.

Australia supports the universal observance of internationally accepted standards of human rights and regularly raises human rights issues in a wide range of countries, including Indonesia. In this regard, the Government maintains a close interest in developments in East Timor and has, over the years, continued to raise questions of human rights in the Province, and to seek free access to the Province for the media, international organisations and aid workers.

As a practical matter, Australia's de jure recognition of Indonesia's acquisition of East Timor has enabled Australia to pursue its concerns for the human rights and economic development of the people of East Timor in a constructive and effective manner with the Indonesian authorities.

Senator Evans raised human rights issues with the Indonesian Foreign Minister, Mr Alatas, when he visited Australia in March 1989 and again in their meeting on 10-11 December 1989.

Australia's active support for the rights of the people of East Timor is well documented. The Government has assisted a United Nations Children Fund (UNICEF) project in East Timor since its inception in 1982, with the total contribution to the project now being $3.24 million.

Australia has also contributed $1.8 million over the last six years to the International Committee of the Red Cross (ICRC) for its activities in East Timor.

More recently, the Australian Ambassador to Indonesia took the opportunity during his visit to East Timor from 23-27 October 1989 to announce the first Australian bilateral aid grant to the Province.

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It is a grant of $100;000 which will be used for an initial one year project to demonstrate better farming techniques throughout the Province and to encourage farmers to accept technology appropriate to their needs.

The conclusion of the Treaty in no way impedes Australia's efforts on behalf of the East Timorese. Indeed, it is hoped that closer relations with Indonesia flowing from the negotiations will provide Australia with a more influential position from which to help the people of East Timor.

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